IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 381 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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JAGDISH NATHABHAI SOLANKI - Applicant(s)
Versus
THE STATE OF GUJARAT & 10 - Respondent(s)

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Appearance :
MR MEHUL H RATHOD for Applicant(s) : 1,
MR KT DAVE, APP for Respondent(s) : 1
MS AVANI S MEHTA for Respondent(s) : 4 - 7.
MR TUSHAR MEHTA for Respondent(s) : 8 - 9.
MR ANSHIN H DESAI for Respondent(s) : 10,
MR HARSHIT S TOLIA for Respondent(s) : 11,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of

the Constitution of India read with Section 482 of the Criminal Procedure Code, the petitioner – original complainant has prayed for an appropriate Writ, direction and/or order quashing and setting aside the report dated 27.05.2006 of respondent No.3 filed before the learned J.M.F.C., Kathor. It is also further prayed to transfer the investigation of the complaint being C.R.No.I-85 of 2006 registered with Kamrej Police Station to the CID Crime or any other independent agency.

2. The facts leading to the present Special Criminal Application and as per the petitioner are as under:

The petitioner- original complainant approached Kamrej Police Station disclosing cognizable offences committed by respondent Nos. 4 to 8 herein for the offences punishable under Sections 465, 467, 471, 469, 114 of the Indian Penal Code and Section 3(1)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, due to influence of respondent No.4 and other accused, the Police Authorities in total violation of

provisions of Section 154(1) of the Cr.P.C., did not register the complaint and therefore, on 28.03.2006, the petitioner sent the substance of the information to respondent No.2 as required under Section 154(3) of the Cr.P.C. Respondent No.2 vide communication dated 04.04.2006 directed Kamrej Police Station to take appropriate action in the complaint made by the petitioner but the Kamrej Police Station did not register the offences and did not initiate investigation. That on 17.04.2006 the petitioner filed Special Criminal Application No.685 of 2006 before this Court praying for issuance of direction to the police authority to register the complaint and initiate the investigation. That during the pendency of the said proceedings, Kamrej Police Station registered the complaint being C.R.No.I-85 of 2006 on 29.04.2006 against respondent Nos.4 to 8 for the offences alleged against them inclusive of the offence under Section 3(1)(5) of the Atrocities Act. It is the case on behalf of the petitioner that it was assured that proper investigation will be carried out by the authority. That said Special Criminal Application came to be disposed of vide order dated

02.05.2006. The investigation was transferred to respondent No.3 as the offence alleged was under the provisions of the Atrocities Act. That the petitioner preferred another petition being Special Criminal Application No. 1047 of 2006 directing the Investigating Officer to carry out the investigation forthwith and said Special Criminal Application came to be disposed of by the learned Single Judge of this Court vide order dated 23.06.2006 directing the Investigating Officer to carry out the investigation forthwith according to law and by reserving liberty to approach this Court. It appears that in the meantime respondent No.3 submitted report dated 27.05.2006 to the learned J.M.F.C., Kathor stating that no offence under the provisions of Atrocities Act have been committed by the accused persons and hence, Investigating Authority be permitted to delete the provisions of Section 3(1)(5)of the Atrocities Act from the complaint. It appears that the learned J.M.F.C., Kathor passed an order on the very day 'kept with F.I.R.'. It is the case on behalf of the petitioner that at the time when Special Criminal Application No.1047 of 2006 was filed by the

petitioner, the petitioner was not aware of filing of report dated 27.05.2006 nor it was pointed out before this Court on behalf of the Investigating Officer with regard to submitting report dated 27.05.2006. Being aggrieved and dissatisfied with the report dated 27.05.2006 requesting to delete section 3(1)(5) of the Atrocities Act from the F.I.R., the petitioner – original complainant has preferred the present petition under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C. for the aforesaid reliefs.

3. Mr.Mehul Rathod, learned Advocate appearing on behalf of the petitioner has relied upon the decision of the Division Bench of this Court in the case of ***Adesing Bavabhai and Ors. v/s. The State of Gujarat*** reported in *VIII (GLR) 350* and has vehemently submitted that in the instant case the Investigating Officer has overlooked the provisions of Section 173 of the Cr.P.C. and also disregarded the provisions of police manual in as much as no report asking for particular type of summary deleting Section 3(1)(5) of the Atrocities Act has been filed by the

Investigating Officer. It is submitted that as held by the Division Bench of this Court even the Magistrate is not bound to accept the opinion of the Police Officer regarding the non-commission of the offence by the accused and it is open for the the Magistrate to take cognizance of the offence himself under Section 190 or call for further report from the Investigating Officer and the final words vests not with the Investigating Officer but with the Magistrate. It is also further submitted that if the Investigating Officer is of the opinion that no case is made out against the accused under Section 3(1)(5) of the Atrocities Act, in that case, it was incumbent on the part of the Investigating Officer to submit an appropriate Summary Report and copy of which is required to be given to the complainant and even at that stage the complainant can make his submission against the said report and can request the learned Magistrate not to accept the said report. It is submitted that in the present case, such procedure has not been adopted by the Investigating Officer and straightway the report has been submitted to delete Section 3(1)(5) of the Atrocities Act and

unfortunately the learned Magistrate has also not exercised powers vested with him and passed an order of keeping the said report with F.I.R., which is contrary to the decision of the Division Bench of this Court. Under the circumstances, it is requested to allow the present application and grant the reliefs as prayed for by making further request to transfer the investigation of the said case to the CID Crime and/or any other independent agency.

4. The petition is opposed by Mr.K.T.Dave, learned APP appearing on behalf of the State; Ms.Avni Mehta; Mr.Tushar Mehta and Mr.Anshin Desai, learned Advocates appearing on behalf of the respective respondents.

5. An affidavit in reply is also filed by respondent No.3- Dy.S.P., S.C. and S.T. Cell, Surat District – Investigating Officer. It is submitted in the reply that he has investigated the offence registered as C.R.No.I-85 of 2006 with Kamrej Police Station, Surat and after investigation it was found that no offence under Section 3(1)(5) of the Atrocities Act was found to have been committed by

the accused persons. He has further submitted report to the learned J.M.F.C., Kator for deleting / dropping the offence under Section 3(1)(5) of the Atrocities Act and as remaining offence were falling under the provisions of Sections 465, 467, 471 and 114 of the Indian Penal Code, Dy.S.P., by his order had transferred the investigation from him to the Kamrej Police Station. The learned Advocates appearing on behalf of the respective respondents while opposing the present petition have submitted that as after investigation it was found that the accused have not committed any offence as alleged under Section 3(1)(5) of the Atrocities Act, a report was rightly submitted by the Investigating Officer to the J.M.F.C., Kator. It is submitted that looking to the affidavit of the Investigating Officer and as the investigation was carried out throughly, the investigation is not required to be transferred to any other authority as prayed by the petitioner. Therefore, it is requested to dismiss the present petition.

6. Heard the learned Advocates appearing on

behalf of the respective parties.

7. It is not in dispute that after the complaint was registered as C.R.No.I-85/2006 with Kamrej Police Station, investigation was handed over to Dy.S.P., S.T. and S.C. Cell, Surat and it was investigated by him. The complaint lodged against the accused persons were for the offences punishable under Sections 465, 467, 469, 471 and 114 of the IPC and Section 3(1)(5) of the Atrocities Act. It appears that after the investigation as it was found by the Investigating Officer that no case is made out against the accused persons under Section 3(1)(5) of the Atrocities Act, he submitted report dated 27.05.2006 before the J.M.F.C., Kathor and prayed to delete the said section from the complaint and the learned J.M.F.C., passed an order of keeping the said report with the F.I.R. Such procedure adopted by the Investigating Officer is unknown to the provisions and scheme of Criminal Procedure Code. After investigation is concluded, if case is made out against the accused persons, Investigating Officer is required to submit the charge-sheet and if according

to the Investigating Officer no case is made out against the accused persons, in that case, he is required to submit appropriate Summary Report with a copy to the complainant and same is required to be considered by the learned Magistrate whether to accept such report or not and at that stage, even the complainant is required to be given an opportunity; the complainant can object to such report and make submissions not to accept such Summary Report and may request the learned Magistrate to prosecute the accused persons by issuing summons / process. Said aspect is now not res-integra.

8. Aforesaid aspect came to be considered by the Division Bench of this Court in the case of Adesing Bavabhai (supra); after considering the scheme of Cr.P.C. and considering various stages of investigation, more particularly sections 169, 173 and 190 and provisions of police manual and after considering the decision of the Full Bench of this Court in the case of State v/s. Lakhamshi reported in VII GLR 130, Division Bench of this Court has held and observed that the final report of the completion

of the investigation may either of two forms. If, according to the Police Officer, the investigation discloses an offence has been committed by the accused, he has to submit a charge-sheet against the accused persons. If, on the other hand, he comes to the conclusion that the investigation does not disclose any offence, he has to submit a report in another form prescribed by the State Government asking for what is known as **(A)** or **(B)** or **(C)** Summary, as the case may be; but in any event the final report either in the form of a charge-sheet or in the form of a report asking for a particular type of summary has to be submitted by the Investigating Officer. It is also further observed by the Division Bench that the scheme of the sections of the Cr.P.C., makes it clear that the Magistrate concerned with the case should be kept informed about the commencement of the investigation and also about the completion of the investigation. Considering the decision of the Full Bench in the case of Lakhanmshi (supra), the Division Bench has also observed that the Magistrate to whom the final report is made under Section 173 is not bound to accept the opinion of the Police Officer

regarding the non-commission of the offence by the accused in question. It is open to the Magistrate to take cognizance of the offence himself under Section 190 of the Cr.P.C. or to call for further report from the Investigating Officer; but the final word in such case rests not with the Investigating Officer but with the Magistrate. Overlooking the provisions of Section 173 of the Cr.P.C. and disregarding the provisions of the Police Manual, no report asking for a particular type of Summary with respect to offence under Section 3(1)(5) of the Atrocities Act has ever been filed by the Investigating Officer and no summary was asked for as regards the same. In the instant case, Investigating Officer has submitted report dated 27.05.2006 before the learned J.M.F.C, Kathor for deleting Section 3(1)(5) of the Atrocities Act from the complaint and unfortunately the learned Magistrate passed an order to keep the said report with the FIR. It is also required to be noted that if appropriate report is submitted before the learned Magistrate submitting that no case is made out against the accused persons then in that case such report is required to be given

to the complainant and he is required to be given an opportunity by the learned Magistrate. As stated above, even the learned Magistrate is not bound to accept the said report. He may take cognizance of the offence himself or call for further report from the Investigating Officer. In this case such course has not been adopted either by the learned J.M.F.C. or by the Investigating Officer.

9. Under the circumstances, the Investigating Officer – respondent No.3 is directed to submit appropriate report (if he is of the opinon that no case is made out against the accused under Section 3(1)(5) of the Atrocities Act) before the learned J.M.F.C., Kathor with an intimation to the petitioner – original complainant and said report is required to be considered by the learned J.M.F.C, Kathor in accordance with law and on its own merits by adopting the procedure as stated above. It also appears from the record from the record so far as other offences are concerned, nothing is on record whether investigation has been concluded or not; whether any charge-sheet has been filed against the accused

persons or not. For that purpose also, some directions are required to be issued to the Investigating Officer to complete the investigation as early as possible and submit the charge-sheet / report before the J.M.F.C., Kathor. Under the circumstances, while disposing of the present Special Criminal Application, respondent No.3 is directed to submit appropriate Summary report before the learned J.M.F.C., Kathor with respect to the offences punishable under Section 3(1)(5) of the Atrocities Act with an intimation to the original complainant and the learned J.M.F.C., Kathor is directed to consider the same in accordance with law and on its own merits and considering the observations made by this Court hereinabove. It will be open for the petitioner to urge before the learned J.M.F.C., Kathor not to accept the said report and to take cognizance for the offence under Section 3(1)(5) of the Atrocities Act against the accused. So far as the rest of the offences alleged against the respondents – accused being C.R.No.85/2006 is concerned, Investigating Officer is directed to conclude the investigation as early as possible and submit the

charge-sheet / report before the learned J.M.F.C., so that same can be dealt with in accordance with law in the scheme and relevant provisions of the Cr.P.C. So far as the prayer of the petitioner to transfer investigation is concerned, in view of the above direction at present no order is passed. With these, present petition is disposed of. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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